

Foreword

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THE GLOBAL ADVANCEMENT OF WOMEN: BARRIERS AND BEST PRACTICES

FOREWORD

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In April 2006, the Women, Leadership & Equality Program and the International & Comparative Law Program of the University of Maryland School of Law co-sponsored a symposium entitled "The Global Advancement of Women: Barriers and Best Practices." The *University of Maryland Law Journal of Race, Religion, Gender and Class* joined with the two programs to publish the papers that were presented at this interdisciplinary symposium.

The keynote speaker for the conference was Dr. Sheila Dauer, Director of the Women's Human Rights Program, Amnesty International USA. Dauer was joined by a number of other distinguished panelists, including legal academics, political scientists, experts in microfinance, former legislators, and leaders of nonprofits. Their central theme was the need for a multi-faceted approach to the challenge of women's equality around the world. The panelists brought their expertise to bear on identifying the complex barriers that hold back women's social, legal, political and economic advancement. They also shared with those in attendance many of the programs that have successfully eroded those barriers.

The opening panel of the symposium, *Barriers to Women's Global Advancement*, was designed to highlight the broad impediments to women around the world. The subsequent panels all focused on best practices aimed at eliminating such impediments. They included panels on *Enhancing Human Security*, *Enhancing Political Representation*, *Enhancing Judicial Representation* and finally *Enhancing Economic Security*. The insightful speakers on each

* Professor of Law and Founding Director, Women, Leadership & Equality Program, University of Maryland School of Law; B.A. Yale College 1980; J.D. University of Virginia School of Law 1983. I would like to thank Naomi Cahn for her invaluable advice in planning the conference. I also would like to thank the other panelists and moderators, the Editors of the *University of Maryland Journal of Race, Religion, Gender & Class* for publishing the symposium papers, and Megan McDonald, Kris Callahan and the 2005-2006 Rose Zetzer Fellows for their assistance. Finally, I would like to thank the Marjorie Cook Foundation and Dean Karen Rothenberg for their continued support of the Women, Leadership & Equality Program.

of these panels shed light on the intractable issues of poverty, cultural resistance to gender equality, the power of incumbency and the lack of education for women and girls as some of the most difficult obstacles to overcome. However, they shared initiatives that give some hope that these obstacles are not insurmountable and can yield in the face of comprehensive strategies for change.

In the following articles, the authors elaborate on the aforementioned strategies and shed light on the viability of such approaches. These papers address global efforts to achieve gender equality in the legal, political, health care, security and economic spheres. In addition to Dauer's keynote remarks, this volume includes articles by national and international experts on the intersection of gender and law, politics, health care and economic development. The authors include: Dr. Ruth B. Cowan, Scholar-in-Residence at American University School of Public Affairs' Women & Politics Institute; Dr. Yvonne Galligan, Fulbright Fellow and Director of the Centre for Advancement of Women in Politics, Queen's University, Belfast; Tamera Fillinger, former Regional Legal Advisor, United States Agency for International Development (USAID); and Elissa McCarter, Director of the Office of Development Finance, CHF International. Collectively, these papers suggest that a broad model, one that joins a variety of strategies to empower women, has the best chance of success.

In her keynote address, *Violence Against Women: An Obstacle to Equality*,¹ Sheila Dauer frames the issue of violence against women as a matter of human rights by detailing where the issue fits within the long, global struggle for women's basic human rights. She characterizes violence against women as the "human rights scandal of our times."² Dauer notes that violence reflects the subordinate role of women in countries around the world and that it is reinforced by laws, policies and practices which fail to address women's inequality.³ She argues that framing violence as a human rights issue allows organizations like Amnesty International to push for change in the same ways that they have moved toward reform on health care, debt burdens, trade agreements relating to pharmaceutical patents and other issues which have been defined as human rights.⁴ Framing the issue

1. Sheila Dauer, *Violence Against Women: An Obstacle to Equality*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 281, 281-90 (2006).

2. *Id.* at 281.

3. *Id.* at 281-83.

4. *Id.* at 286.

this way also creates a common language, Dauer says, for the work of anti-violence activists globally.⁵ Human rights activists can work toward the criminalization of rape, domestic violence and other forms of violence against women in all countries and support efforts to hold perpetrators accountable.⁶ Dauer concludes that violence against women may be universal, but it is not inevitable. With global efforts, women could live in dignity without fear of violence.⁷

In her article, *Women's Representation on the Courts in the Republic of South Africa*,⁸ Ruth Cowan's study of the South African Constitution and its unique vision of gender parity in the judiciary sheds light on the progress in that country toward achieving diversity on the bench. The 1996 Constitution recites the "need for the judiciary to reflect broadly the racial and gender composition of South Africa."⁹ It explicitly provides that diversity "be considered when judicial officers are appointed."¹⁰ When South Africa went through its transformation from a country ruled by an apartheid regime to a constitutional democracy, it embraced a constitution which explicitly includes non-sexism as one of its founding values.¹¹ The women of the African National Congress (ANC) had laid the foundation for this emphasis on gender equality through their work preceding the fall of the apartheid government. They formulated a statement noting "the struggle for gender equality should be an autonomous component of the national liberation effort."¹² The result of such efforts was a constitution that established the Judicial Service Commission (JSC), a body that includes the Chief Justice of South Africa and other high governmental officials. The role of the JSC is to select candidates for judicial appointments with a specific concern for gender and racial diversity. Increased diversity was thought to be an essential component of a comprehensive plan to reestablish the legitimacy of the courts in a new, post-apartheid South Africa.¹³ Cowan observes, however, that the lofty goals of the new constitution in establishing the JSC have fallen far short. She states that "there is agreement that the record, more than a decade after the inauguration of the New Democracy, is woeful . . .

5. *Id.*

6. *Id.* at 288-89.

7. *Id.* at 289.

8. Ruth B. Cowan, *Women's Representation on the Courts in the Republic of South Africa*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS, 291, 291-317 (2006).

9. S. AFR. CONST. 1996, § 174(2).

10. *Id.* at § 178.

11. Cowan, *supra* note 8, at 291-92.

12. *Id.* at 294.

13. *Id.* at 300-01.

of the 210 judges in the superior courts of South Africa . . . only twenty-eight (13.3%) were women.”¹⁴ Cowan argues that patriarchy and sexism, religious and customary law, the few numbers of women in the legal profession, and “lackluster efforts” on the part of the JSC to appoint women judges remain obstacles to full gender equality.¹⁵ Cowan concludes that more targeted efforts are needed, like the initiative by the International Association of Women Judges (IAWJ) to identify qualified women candidates before the full promise of the South African Constitution in this area can be fulfilled.¹⁶

In her article, *Bringing Women In: Global Strategies for Gender Parity in Political Representation*,¹⁷ Yvonne Galligan denotes the variety of mechanisms used in nearly 100 countries around the world to achieve equality of representation in legislative bodies. She evaluates the benefits of such provisions and some of the costs attached to them. Galligan begins by exploring legislative quotas in the context of the unique electoral and political systems within which they have been tried. For example, she observes that where decision-making is vested in a centralized government with “powerful executive and bureaucracy,” legislative initiatives have been more likely to achieve political gender parity.¹⁸ Such provisions run the gamut from mandating a particular number of seats for women, which may tend to undermine their legitimacy when they take office, to requiring that political parties reserve a certain number of candidate slots for women.¹⁹ In addition to such mandatory legal strategies, there are also voluntary party quotas in some countries. These have proven successful in Scandinavia and, indeed, “over 160 parties in more than 80 countries have adopted some form of quota.”²⁰ Given the complex interaction of voluntary quotas and the particular party system at issue, Galligan argues that quotas alone are often not sufficient to remedy persistent gender imbalances in political office.²¹ Whether mandatory or voluntary, Galligan notes that “[c]ivil society mobilization around gender parity” must also exist in conjunction with parity measures to

14. *Id.* at 303.

15. *Id.* at 305-15.

16. *Id.* at 316.

17. Yvonne Galligan, *Bringing Women In: Global Strategies for Gender Parity in Political Representation*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS, 319, 319-36 (2006).

18. *Id.* at 321.

19. *Id.* at 321-30.

20. *Id.* at 330.

21. *Id.* at 330-33.

increase the likelihood that they will produce gender balance.²² She concludes that “the most enduring strategies” stem from the confluence of quota provisions with what Galligan calls “the velvet triangle” — a coalition of political women, women leaders and feminist activists who actively push for such reform.²³

In her article, *Enhancing Human Security: U.S. Policies and their Health Impact on Women in Sub-Saharan Africa*,²⁴ Tamera Fillinger takes issue with the current U.S. Administration’s policy regarding public health funding in the developing world. She argues that these policies hinder the health and well-being of women and that they have actually limited access to health care and increased infant mortality, thus reversing the positive trends of previous decades.²⁵ The so-called “Mexico City Policy,” first created under the Reagan Administration, prohibits the USAID from funding foreign organizations that “provide counseling and referral for abortion, perform abortions in cases not involving a threat to the life of the mother, rape or incest, or advocate to make abortion legal or more available in their country.”²⁶ Fillinger traces the development of these policies from the reinstatement of the Mexico City Policy by the Administration of President George W. Bush in 2001, through the advent of the President’s Emergency Plan for AIDS Relief (PEPFAR) in 2003. She then outlines the very recent developments in the courts that raise questions about the constitutionality on First Amendment grounds of AAPD 05-04, the USAID policy directive that requires that any organization receiving federal funding under the AIDS Authorization Act and PEPFAR sign a certification opposing prostitution and sex trafficking.²⁷ This policy directive applies both to foreign organizations and, for the first time, to U.S. organizations as well. It runs the risk of prohibiting the provision of medical care and education to prostitutes since those activities might be construed as “promoting prostitution.” The directive also allows organizations to use a single-focus “abstinence only” approach to limiting the spread of HIV/AIDS. This approach is in contravention of the “multi-sectoral” approach required under prior regulations. The multi-sectoral approach

22. *Id.* at 333.

23. *Id.* at 335.

24. Tamera Fillinger, *Enhancing Human Security: U.S. Policies and their Health Impact on Women in Sub-Saharan Africa*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 337, 337-52 (2006).

25. *Id.* at 337.

26. *Id.* at 337-38.

27. *Id.* at 347.

is one which Fillinger argues is grounded in science and has thus been far more effective in preventing HIV/AIDS.²⁸ Fillinger concludes that the current U. S. Administration has promoted policies that have harmed rather than helped women and that only “a return to an adherence to best practices in the international health sector can reverse this trend.”²⁹

In her article, *Women and Microfinance: Why We Should Do More*,³⁰ Elissa McCarter traces the evolution of microcredit programs – small loans to rural villagers to support small businesses.³¹ She notes the success of this effort and stresses the need for more comprehensive microfinance programs, including access to bank accounts and other financial services.³² Some might ask how microcredit is related to gender equality. McCarter answers that question by making clear that access to capital is a basic human rights issue like access to health care and education.³³ Empirical studies demonstrate a significant decrease in overall poverty rates as a result of microcredit programs.³⁴ Of the 1.3 billion people in poverty globally, seventy percent are women. Economic empowerment is central to achieving development goals and gender equality. McCarter stresses the need to “move women up in the market” to small and medium enterprises, now that microcredit programs have proven so successful.³⁵ If microfinance organizations and banks are able to see women-owned businesses as emerging market opportunities, McCarter argues that these organizations could see a significant improvement in client retention and risk reduction, as well as overall social performance.³⁶ She suggests increasing the number of women in leadership positions may improve the quality of microfinance services for women.³⁷ McCarter concludes that microfinance offers people a

28. *Id.* at 349.

29. *Id.* at 351.

30. Elissa McCarter, *Women and Microfinance: Why We Should Do More*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 353, 353-66 (2006).

31. *Id.* at 354-56.

32. The “father” of microcredit is Bangladeshi economist Muhammad Yunus. Yunus is the founder of Grameen Bank, the first large-scale microcredit lender. The significance of this approach to alleviating poverty, and thus enabling peaceful, stable societies, was recently given international recognition when Yunus was awarded the Nobel Peace Prize on October 13, 2006. See Celia W. Dugger, *Peace Prize to Pioneer of Loans For Those Too Poor to Borrow*, N.Y. TIMES, Oct. 14, 2006, at A1.

33. McCarter, *supra* note 30, at 355.

34. *Id.* at 356.

35. *Id.* at 361-63.

36. *Id.* at 363-64.

37. *Id.* at 364-65.

way to cope with risks, build assets and keep themselves above the poverty line.³⁸ These programs could have more impact if microfinance were combined with other services and interventions, such as a more sophisticated range of products, better use of technology, collaboration with other development organizations and establishing long-term borrower relationships. Such combined programs would help advance clients up the financial ladder.³⁹

One of the primary goals of the Women, Leadership & Equality Program is to foster research and scholarship in the area of gender equality. The symposium authors have given us a comprehensive and interdisciplinary perspective on the multi-faceted strategies necessary to break down the global barriers to women's social, legal, political and economic empowerment. The articles illustrate how the law, while a powerful tool for social change, is limited at best. These authors reinforce the central theme of the symposium, that the law must be supplemented with creative political and socio-economic solutions to have a significant impact on the well-being of women around the world.

The Women, Leadership & Equality Program⁴⁰ and the International & Comparative Law Program⁴¹ are pleased to join with the *University of Maryland Law Journal of Race, Religion, Gender and Class* to present these articles that make a significant contribution to the scholarly canon in gender equality and international human rights law.

38. *Id.* at 366.

39. *Id.*

40. The Women, Leadership & Equality (WLE) program trains law students to become future leaders. The first of its kind in the country, it includes a third-year fellowship program and supports research and scholarship devoted to issues of women and leadership in the legal profession. More information about the WLE Program can be found at www.law.umaryland.edu/specialty/wle/index.asp.

41. The International and Comparative Law Program at the School of Law draws from faculty expertise in public international law, international civil litigation, international business transactions, European Union law, international trade law, comparative labor law, comparative constitutional law, South African law, and the Civil Law tradition (especially the French and German legal systems).

